



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3326/P2

PJK:cs:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 646.01 (1) (b) 9. a., 646.01 (1) (b) 9. b., 646.01 (1) (b) 9. c., 646.01
2 (1) (b) 9. d., 646.31 (2) (b) 1., 646.31 (2) (b) 2. b., 646.31 (2) (b) 3., 646.31 (3),
3 646.31 (5), 646.35 (2), 646.51 (2), 646.51 (3) (b) and 646.73; **to renumber** 646.51
4 (3) (a) (title); **to renumber and amend** 646.01 (1) (b) 9. (intro.), 646.11 (1),
5 646.31 (10), 646.31 (13), 646.33 (1), 646.35 (3) (intro.) (except 646.35 (3) (title)),
6 646.35 (3) (a), 646.35 (3) (b), 646.35 (3) (c), 646.35 (4), 646.51 (1), 646.51 (3) (a)
7 1., 646.51 (3) (a) 2. and 646.51 (4); **to consolidate, renumber and amend**
8 646.31 (2) (b) 2. (intro.) and a.; **to amend** 609.98 (1), 609.98 (4) (a), 609.98 (4)
9 (b), 645.58 (1) (intro.), 646.12 (2) (d), 646.12 (2) (f) 2., 646.12 (2) (f) 3., 646.12 (4),
10 646.13 (title), 646.13 (1) (intro.), 646.13 (1) (b), 646.13 (2) (intro.), 646.13 (2) (b),
11 646.13 (2) (c), 646.13 (2) (d), 646.13 (3) (intro.), 646.13 (3) (a), 646.13 (3) (b),
12 646.13 (3) (c) (intro.), 646.13 (3) (c) 2., 646.13 (4), 646.15 (title), 646.15 (1) (a)
13 (intro.), 646.15 (1) (a) 1., 646.15 (1) (a) 2., 646.15 (1) (a) 4., 646.21 (2), 646.31 (2)
14 (a) 1., 646.31 (2) (a) 2., 646.31 (2) (f) (title), 646.31 (2) (f) 2., 646.31 (6) (a), 646.31
15 (6) (b), 646.31 (7), 646.31 (8), 646.31 (9) (a), 646.31 (9) (b), 646.31 (9) (c), 646.31

(9) (d), 646.31 (11), 646.32 (1), 646.325 (1), 646.325 (2) (intro.), 646.325 (2) (a) (intro.), 646.325 (2) (b), 646.33 (2), 646.33 (3), 646.35 (3) (title), 646.35 (5), 646.35 (6) (a), 646.35 (6) (b), 646.35 (6) (bm), 646.35 (6) (c) (intro.), 646.35 (6) (c) 1. (intro.), 646.35 (6) (c) 1. b., 646.35 (6) (c) 2. (intro.), 646.35 (6) (c) 2. b., 646.51 (3) (c), 646.51 (5), 646.51 (6), 646.51 (7) (a), 646.51 (8), 646.51 (9) (b) 1., 646.51 (9) (b) 2., 646.60 (1) (a) and 646.61 (2); **to repeal and recreate** 646.01 (1) (b) 1. and 646.01 (1) (b) 11.; and **to create** 646.01 (1) (a) 2. k., 646.01 (1) (a) 2. L., 646.01 (1) (b) 11m., 646.01 (1) (b) 15., 646.01 (1) (b) 16., 646.01 (1) (b) 17., 646.01 (1) (b) 18., 646.03 (1m), 646.03 (2n), 646.03 (2p), 646.03 (4), 646.03 (5), 646.11 (1) (d), 646.11 (1) (e), 646.13 (2) (g), 646.16, 646.31 (1) (d) 10. and 11., 646.31 (2) (g), 646.31 (9) (cm), 646.31 (10) (b), 646.31 (13) (b), 646.31 (13) (c), 646.31 (13) (d), 646.33 (1) (b), (c) and (d), 646.33 (2m) (b), 646.35 (4) (b), 646.35 (7), 646.35 (8), 646.35 (9), 646.35 (10), 646.51 (1c), 646.51 (3) (am) 2. and 646.51 (4) (a), (b) and (d) of the statutes; **relating to:** the insurance security fund.

Analysis by the Legislative Reference Bureau

This bill makes a number of changes to the insurance security fund provisions to make them more uniform with the insurance guaranty fund laws of other states, thus facilitating the administration of liquidations that involve national insurers. In general, the insurance security fund (fund), which is created as a nonprofit organization and funded through assessments paid by insurers covered under the fund, pays claims against insolvent insurers.

Current law specifies types of insurers and insurance that are not covered under the fund. The bill adds some exclusions, including the state Health Insurance Risk-Sharing Plan, the patients compensation fund, a warranty or service contract, any contractual liability policy issued to a warrantor or service contract provider, and the deductible portion of a claim under a liability or worker's compensation insurance policy. The bill provides that, although reinsurance is generally not covered under the fund, reinsurance ceded by an assessable town mutual and reinsurance for which the reinsurer has issued assumption certificates are covered.

The bill transfers some of the responsibilities of the fund's board of directors (board) to the fund, including establishing procedures and acceptable forms of proof for eligible claims, exercising the powers of the liquidator in any action against an

insurer in liquidation, and having standing to appear in any liquidation proceeding in this state involving an insurer in liquidation. The bill also gives the fund the authority to appear or intervene before a court or agency of any other state that has jurisdiction over an impaired or insolvent insurer with respect to which the fund is or may become obligated.

Current law specifies the types of claims that are payable by the fund. The bill adds a number of types of claims that are not payable, including a claim based on marketing materials, a claim for bad faith damages, and a claim based on misrepresentations regarding policy benefits. The bill specifies the eligibility requirements for claims of payees under structured settlement annuities, which current law does not address. The bill also eliminates a \$200 deductible that is required under current law before the fund pays any portion of a claim.

Under current law, the fund may recover from a person any amount paid on behalf of the person to a third party. The bill provides that if the fund defends a claim against the person by a third party, the fund may also recover from the person the costs and expenses incurred in defending the claim. The bill expands on the subrogation rights of the fund under current law.

Under current law, the fund may guarantee, assume, or reinsure coverage under an annuity or a life or disability insurance policy. The bill prohibits the fund from providing such coverage, however, to any person who has coverage under any other state's security fund statutes. The bill also provides authority for the fund to succeed, if it so elects, to an insolvent insurer's rights and obligations under a contract covered by the fund under an indemnity reinsurance agreement.

Current law generally provides that assessments paid by insurers to support the fund are based on premium written in the year before the year in which the order of liquidation is entered. The bill changes the assessment base to the year preceding the year in which the assessment is approved by the board. Under current law the maximum assessment in any calendar year is two percent of premium. Under the bill the maximum assessment in any calendar year may not exceed two percent of average annual premium received in this state during the three calendar years preceding the year in which the liquidation order is entered.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 609.98 (1) of the statutes is amended to read:

2 609.98 (1) **DEFINITION.** In this section, "premiums" has the meaning given
3 under s. 646.51 (3) ~~(a) 1~~ (1c) (c).

4 **SECTION 2.** 609.98 (4) (a) of the statutes is amended to read:

5 609.98 (4) (a) To pay an assessment under s. 646.51 (3) ~~(a) or (b)~~ (am).

1 **SECTION 3.** 609.98 (4) (b) of the statutes is amended to read:

2 609.98 (4) (b) To the extent that the amount on deposit exceeds 1% of premiums
3 written in this state by the health maintenance organization insurer in the preceding
4 calendar year and the deposit is not necessary to pay an assessment under s. 646.51
5 (3) ~~(a) or (b)~~ (am).

6 **SECTION 4.** 645.58 (1) (intro.) of the statutes, as affected by 2003 Wisconsin Act
7 44, is amended to read:

8 645.58 (1) LIABILITY. (intro.) Except as provided in this subsection and in s.
9 646.35 (8) (e), the amount recoverable by the liquidator from a reinsurer shall not be
10 reduced as a result of delinquency proceedings, regardless of any provision in the
11 reinsurance contract or other agreement. Payment made directly to an insured or
12 other creditor shall not diminish the reinsurer's obligation to the insurer's estate
13 except when any of the following applies:

14 **SECTION 5.** 646.01 (1) (a) 2. k. of the statutes is created to read:

15 646.01 (1) (a) 2. k. Risk-sharing plans under chs. 149 and 619.

16 **SECTION 6.** 646.01 (1) (a) 2. L. of the statutes is created to read:

17 646.01 (1) (a) 2. L. The patients compensation fund under s. 655.27.

18 **SECTION 7.** 646.01 (1) (b) 1. of the statutes is repealed and recreated to read:

19 646.01 (1) (b) 1. Any portion of a life insurance policy or annuity contract that
20 is not guaranteed by the insurer or under which the risk is borne by the policy or
21 policyholder.

22 **SECTION 8.** 646.01 (1) (b) 9. (intro.) of the statutes is renumbered 646.01 (1) (b)
23 9. and amended to read:

24 646.01 (1) (b) 9. Any self-funded, self-insured, or partially or wholly uninsured
25 plan of an employer or other person to provide life insurance, annuity, or disability

1 benefits to its employees or members to the extent that the plan is self-funded,
2 self-insured, or uninsured, ~~including benefits payable by an employer or other~~
3 ~~person under any of the following:~~

4 SECTION 9. 646.01 (1) (b) 9. a. of the statutes is repealed.

5 SECTION 10. 646.01 (1) (b) 9. b. of the statutes is repealed.

6 SECTION 11. 646.01 (1) (b) 9. c. of the statutes is repealed.

7 SECTION 12. 646.01 (1) (b) 9. d. of the statutes is repealed.

8 SECTION 13. 646.01 (1) (b) 11. of the statutes is repealed and recreated to read:

9 646.01 (1) (b) 11. Any warranty or service contract.

10 SECTION 14. 646.01 (1) (b) 11m. of the statutes is created to read:

11 646.01 (1) (b) 11m. Any contractual liability policy that is issued to a warrantor,
12 warranty plan, warranty plan administrator, or service contract provider and that
13 provides coverage of any liability or performance arising out of or in connection with
14 a warranty or service contract.

15 SECTION 15. 646.01 (1) (b) 15. of the statutes is created to read:

16 646.01 (1) (b) 15. An unallocated annuity contract.

17 SECTION 16. 646.01 (1) (b) 16. of the statutes is created to read:

18 646.01 (1) (b) 16. A contractual agreement that obligates an insurer to provide
19 a book value accounting guarantee for defined contribution benefit plan participants
20 by reference to a portfolio of assets that is owned by the benefit plan or its trustee,
21 neither of which is an affiliate of the insurer.

22 SECTION 17. 646.01 (1) (b) 17. of the statutes is created to read:

23 646.01 (1) (b) 17. Any liability under a policy or contract to the extent that it
24 provides for interest or other changes in value that are to be determined by the use
25 of an index or other external reference stated in the policy or contract and to the

1 extent that the interest or other changes in value have not been credited to the policy
2 or contract as of the date of the entry of the order of liquidation and are subject to
3 forfeiture. If a policy's or contract's interest or other changes in value are credited
4 less frequently than annually, for purposes of determining the values that have been
5 credited and that are not subject to forfeiture, the interest or change in value
6 determined by using the procedures specified in the policy or contract will be credited
7 as if the contractual date of crediting interest or other changes in value was the date
8 of entry of the order of liquidation and will not be subject to forfeiture.

9 **SECTION 18.** 646.01 (1) (b) 18. of the statutes is created to read:

10 646.01 (1) (b) 18. The deductible, self-funded, or self-insured portion of a claim
11 under a liability or worker's compensation insurance policy, regardless of the timing
12 or method provided in the policy, endorsement, or any other agreement for payment
13 of the deductible, self-funded, or self-insured amount by the insured. This
14 subdivision does not apply to a worker's compensation insurance policy if the insured
15 under the policy is a debtor under 11 USC 701, et seq., as of the deadline set by the
16 liquidator for filing claims against the insolvent insurer.

17 **SECTION 19.** 646.03 (1m) of the statutes is created to read:

18 646.03 (1m) "Direct insurance" does not include a policy or contract of
19 reinsurance, except for the following:

20 (a) Reinsurance for which the reinsurer has issued assumption certificates
21 under the reinsurance policy or contract.

22 (b) Reinsurance ceded by an assessable town mutual company.

23 **SECTION 20.** 646.03 (2n) of the statutes is created to read:

1 646.03 (2n) “Impaired insurer” means an insurer subject to this chapter that
2 is placed under an order of rehabilitation or conservation by a court of competent
3 jurisdiction.

4 **SECTION 21.** 646.03 (2p) of the statutes is created to read:

5 646.03 (2p) “Insolvent insurer” means an insurer subject to this chapter that
6 is placed under an order of liquidation by a court of competent jurisdiction with a
7 finding of insolvency.

8 **SECTION 22.** 646.03 (4) of the statutes is created to read:

9 646.03 (4) With respect to a life or disability insurance policy or an annuity
10 contract, “owner” or “policyholder” means the person who is identified as the legal
11 owner under the terms of the policy or contract or who is otherwise vested with legal
12 title to the policy or contract through a valid assignment completed in accordance
13 with the terms of the policy or contract and properly recorded as the owner on the
14 books of the insurer. “Owner” or “policyholder” does not include a person with only
15 a beneficial interest in a policy or contract.

16 **SECTION 23.** 646.03 (5) of the statutes is created to read:

17 646.03 (5) “Unallocated annuity contract” means an annuity contract or group
18 annuity certificate that is not issued to and owned by an individual, except to the
19 extent of any annuity benefits guaranteed to an individual by an insurer under the
20 contract or certificate.

21 **SECTION 24.** 646.11 (1) of the statutes is renumbered 646.11 (1) (intro.) and
22 amended to read:

23 646.11 (1) (intro.) ORGANIZATION. There is created a ~~fund~~ an organization to be
24 known as the “insurance security fund².” All insurers subject to this chapter are

1 contributors to the fund as a result of their authority to transact business in this
2 state. The fund shall consist of all of the following:

3 (a) All payments made by insurers under s. 646.51, ~~of the~~.

4 (b) The earnings resulting from investments under s. 646.21 (2) ~~and of the~~.

5 (c) The amounts recovered under s. 645.72 (2) or a substantially similar law in
6 the state of domicile of the insolvent insurer.

7 **SECTION 25.** 646.11 (1) (d) of the statutes is created to read:

8 646.11 (1) (d) Amounts reimbursed to the fund through its subrogation and
9 assignment rights.

10 **SECTION 26.** 646.11 (1) (e) of the statutes is created to read:

11 646.11 (1) (e) Any other moneys received by the fund from time to time.

12 **SECTION 27.** 646.12 (2) (d) of the statutes is amended to read:

13 646.12 (2) (d) Employ or retain the personnel necessary to carry out its the
14 fund's duties and set compensation for the personnel, ~~sue or be sued, make contracts~~
15 ~~and borrow money necessary to carry out its duties in the most efficient way,~~
16 ~~including money with which to pay claims under s. 646.31 or to continue coverage~~
17 ~~under s. 646.35. The board may offer as security for such loans its claims against the~~
18 ~~liquidator or its power to levy assessments under this chapter.~~ Personnel employed
19 under this paragraph are not employees of the state and are not subject to s. 20.922
20 or ch. 230.

21 **SECTION 28.** 646.12 (2) (f) 2. of the statutes is amended to read:

22 646.12 (2) (f) 2. Keep confidential the records under subd. 1. pertaining to
23 specific liquidation proceedings involving an insurer until the termination of the
24 liquidation proceedings or until sooner ordered to make the records public by a court
25 of competent jurisdiction.

1 **SECTION 29.** 646.12 (2) (f) 3. of the statutes is amended to read:

2 646.12 (2) (f) 3. Keep confidential the records under subd. 1. pertaining to
3 specific rehabilitation proceedings involving an insurer unless ordered to make the
4 records public by a court of competent jurisdiction.

5 **SECTION 30.** 646.12 (4) of the statutes is amended to read:

6 646.12 (4) OTHER POWERS. The ~~board~~ fund may join an organization consisting
7 of one or more entities of other states performing comparable functions, in order to
8 assist the ~~board~~ fund in carrying out its powers and duties under this chapter and
9 otherwise further the purposes of this chapter.

10 **SECTION 31.** 646.13 (title) of the statutes is amended to read:

11 **646.13 (title) Special duties and powers of the ~~board~~ fund related to loss**
12 **claims.**

13 **SECTION 32.** 646.13 (1) (intro.) of the statutes is amended to read:

14 646.13 (1) DUTIES. (intro.) The ~~board~~ fund shall:

15 **SECTION 33.** 646.13 (1) (b) of the statutes is amended to read:

16 646.13 (1) (b) Stand in the position of the insurer in the investigation,
17 compromise, settlement, denial, and payment of claims under s. 646.31 and the
18 defense of 3rd party claims against insureds, subject to the limitations of s. 645.43.
19 The ~~board~~ fund shall consult and cooperate with the liquidator in carrying out these
20 duties.

21 **SECTION 34.** 646.13 (2) (intro.) of the statutes is amended to read:

22 646.13 (2) POWERS. (intro.) The ~~board~~ fund may:

23 **SECTION 35.** 646.13 (2) (b) of the statutes is amended to read:

1 646.13 (2) (b) Exercise with respect to loss claims the powers that the liquidator
2 has with respect to other claims under ch. 645 or a substantially similar law in the
3 state of domicile of the insolvent insurer.

4 **SECTION 36.** 646.13 (2) (c) of the statutes is amended to read:

5 646.13 (2) (c) With respect to any action against an insurer which is in
6 liquidation, exercise the powers of the liquidator under s. 645.49 (1) or a
7 substantially similar law in the state of domicile of the insolvent insurer.

8 **SECTION 37.** 646.13 (2) (d) of the statutes is amended to read:

9 646.13 (2) (d) Have standing to appear in any liquidation proceedings in this
10 state involving an insurer in liquidation, and have authority to appear or intervene
11 before a court or agency of any other state having jurisdiction over an impaired or
12 insolvent insurer, in accordance with the laws of that state, with respect to which the
13 fund is or may become obligated or that has jurisdiction over any person or property
14 against which the fund may have subrogation or other rights. Standing shall extend
15 to all matters germane to the powers and duties of the fund, including proposals for
16 reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or
17 insolvent insurer and the determination of the policies or contracts and contractual
18 obligations.

19 **SECTION 38.** 646.13 (2) (g) of the statutes is created to read:

20 646.13 (2) (g) Sue and be sued, make contracts, and borrow money necessary
21 to carry out its duties, including money with which to pay claims under s. 646.31 or
22 to continue coverage under s. 646.35. The fund may offer as security for such loans
23 its claims against the liquidator or its power to levy assessments under this chapter.

24 **SECTION 39.** 646.13 (3) (intro.) of the statutes is amended to read:

1 646.13 (3) NO DUTY OR LIABILITY. (intro.) The ~~board~~ fund has no duty or liability
2 with respect to any claim filed as follows:

3 **SECTION 40.** 646.13 (3) (a) of the statutes is amended to read:

4 646.13 (3) (a) With the liquidator under s. 645.61 after the original date for
5 filing specified by the liquidator under s. 645.47 (2), unless the liquidator determines
6 that the claim is considered to have been timely filed under s. 645.61 (2) and the claim
7 participates fully in every distribution to the same extent as other timely filed claims
8 in the same class.

9 **SECTION 41.** 646.13 (3) (b) of the statutes is amended to read:

10 646.13 (3) (b) With a liquidator or court under the laws of any other state after
11 the original date for filing specified by the liquidator or court, unless the liquidator
12 or court determines that the claim is considered to have been timely filed under a law
13 substantially similar to s. 645.61 (2) and the claim participates fully in every
14 distribution to the same extent as other timely filed claims in the same class.

15 **SECTION 42.** 646.13 (3) (c) (intro.) of the statutes is amended to read:

16 646.13 (3) (c) (intro.) Except for claims under life insurance policies, annuities
17 and, or noncancelable or guaranteed renewable disability insurance policies, and
18 except for claims determined to be excused late filings as provided in pars. (a) and
19 (b), if the original date for filing is extended by the liquidator or court, with a
20 liquidator or court after the earlier of the following:

21 **SECTION 43.** 646.13 (3) (c) 2. of the statutes is amended to read:

22 646.13 (3) (c) 2. The ~~final~~ extended date for filing specified by the liquidator or
23 court.

24 **SECTION 44.** 646.13 (4) of the statutes is amended to read:

1 646.13 (4) WHEN DUTY TO DEFEND TERMINATES. Any obligation of the board fund
2 to defend an insured ceases upon the board's fund's payment, by settlement releasing
3 the insured or on a judgment, of an amount equal to the lesser of the board's fund's
4 covered claim obligation limit or the applicable policy limit, subject to any express
5 policy terms regarding tender of limits.

6 **SECTION 45.** 646.15 (title) of the statutes is amended to read:

7 **646.15 (title) Proceedings involving ~~nondomestic~~ insurers.**

8 **SECTION 46.** 646.15 (1) (a) (intro.) of the statutes is amended to read:

9 646.15 (1) (a) (intro.) If ~~a nondomestic~~ an insurer is in liquidation, the board
10 fund may apply to the circuit court for Dane County for, and the court may grant,
11 restraining orders, temporary and permanent injunctions, and other orders
12 considered necessary and proper to prevent any of the following:

13 **SECTION 47.** 646.15 (1) (a) 1. of the statutes is amended to read:

14 646.15 (1) (a) 1. Interference with the board fund or with its administrative
15 proceedings.

16 **SECTION 48.** 646.15 (1) (a) 2. of the statutes is amended to read:

17 646.15 (1) (a) 2. The institution or further prosecution of any action or
18 proceeding involving the insurer or in which the board fund is obligated to defend a
19 party.

20 **SECTION 49.** 646.15 (1) (a) 4. of the statutes is amended to read:

21 646.15 (1) (a) 4. Any other threatened or contemplated action that might
22 prejudice the rights of policyholders or the administration of the liquidation or board
23 fund proceedings.

24 **SECTION 50.** 646.16 of the statutes is created to read:

1 **646.16 Payment of deposits made for benefit of creditors.** (1) The
2 commissioner shall promptly pay to the fund any deposit held in this state that was
3 paid, as required by law or the commissioner, by the insolvent insurer for the benefit
4 of creditors, including policyholders, and not turned over to the domiciliary
5 liquidator upon the entry of a final order of liquidation of an insurer domiciled in this
6 state or in a reciprocal state, as defined in s. 645.03 (1) (i). Of the amount paid to the
7 fund under this subsection, the fund may retain the percentage determined by
8 dividing the aggregate amount of policyholders' claims that are related to the
9 insolvency and for which the fund has provided benefits under this chapter by the
10 aggregate amount of all policyholders' claims in this state that are related to the
11 insolvency. The fund shall remit the balance to the domiciliary liquidator.

12 (2) Any amount retained by the fund under sub. (1) shall be treated as a
13 distribution of estate assets under s. 645.72 or a similar provision of the state of
14 domicile of the insolvent insurer. Deposits subject to this section shall not be treated
15 as deposits as security, escrow, or other security under s. 645.03 (1) (j).

16 **SECTION 51.** 646.21 (2) of the statutes is amended to read:

17 **646.21 (2) INVESTMENT OF ASSETS.** The board may request that assets of the fund
18 not needed currently be invested by the investment board under s. 25.17. If so
19 requested, the investment board shall invest those assets in investments with
20 maturities and liquidity appropriate to the probable needs of the fund for money to
21 perform its duties. All income attributable to the investments shall be credited to
22 the fund, and both income and principal shall be transferred to the ~~board of the fund~~
23 on request of the board. Assets held by the ~~board of the fund~~ shall be invested in a
24 similar manner.

25 **SECTION 52.** 646.31 (1) (d) 10. and 11. of the statutes are created to read:

646.31 (1) (d) 10. Based on an obligation that does not arise under the express written terms of the policy or contract, including any of the following:

- a. A claim based on marketing materials.
- b. A claim based on misrepresentations regarding policy benefits.
- c. An extra-contractual claim, including a claim for punitive or exemplary damages.
- d. A claim for statutorily imposed multiple damages.
- e. A claim for penalties or consequential or incidental damages.
- f. A claim for bad faith damages.

11. In the case of a life or disability insurance policy or an annuity contract, based on side letters, riders, or other documents that do not meet or comply with applicable policy form filing or approval requirements.

SECTION 53. 646.31 (2) (a) 1. of the statutes is amended to read:

646.31 (2) (a) 1. The claim of a policyholder, including a ceding assessable domestic insurer ~~which~~ that is organized under ch. 612 and a domestic insurer ~~which~~ that is a bona fide policyholder of the insurer in liquidation, who ~~at the time of the insured event or of the liquidation order was~~ is a resident of this state under sub. (13).

SECTION 54. 646.31 (2) (a) 2. of the statutes is amended to read:

646.31 (2) (a) 2. Except for a claim of a beneficiary, assignee, or payee under a life or disability insurance policy or annuity contract, the claim of an insured, including a certificate holder, under a policy or annuity contract who ~~at the time of the insured event or of the liquidation order was~~ is a resident of this state under sub. (13).

SECTION 55. 646.31 (2) (b) 1. of the statutes is repealed.

1 **SECTION 56.** 646.31 (2) (b) 2. (intro.) and a. of the statutes are consolidated,
2 renumbered 646.31 (2) (b) and amended to read:

3 646.31 (2) (b) *Certain nonresidents.* The claim is made under a life or disability
4 insurance policy or annuity contract subject to this section and issued by a domestic
5 insurer ~~if all of the following conditions are met: a. The~~ and the claimant is a resident
6 of another state that provides coverage similar to the coverage provided under this
7 chapter but does not provide coverage for the claimant because the insurer was not
8 licensed in that state at the time specified as a requirement for coverage under that
9 state's guaranty association law.

10 **SECTION 57.** 646.31 (2) (b) 2. b. of the statutes is repealed.

11 **SECTION 58.** 646.31 (2) (b) 3. of the statutes is repealed.

12 **SECTION 59.** 646.31 (2) (f) (title) of the statutes is amended to read:

13 646.31 (2) (f) (title) *Beneficiaries, assignees, and payees; life or disability policy*
14 or annuity contract.

15 **SECTION 60.** 646.31 (2) (f) 2. of the statutes is amended to read:

16 646.31 (2) (f) 2. The person is a resident of this state or could have made a claim
17 under par. (b) 2.

18 **SECTION 61.** 646.31 (2) (g) of the statutes is created to read:

19 646.31 (2) (g) *Payees; structured settlement annuity.* 1. Notwithstanding par.
20 (f), the claim of a payee, or of a beneficiary of a deceased payee, under a structured
21 settlement annuity if the payee, or deceased payee's beneficiary, is a resident of this
22 state, regardless of where the policyholder of the structured settlement annuity
23 resides.

24 2. Notwithstanding pars. (b) and (f), the claim of a payee, or of a beneficiary of
25 a deceased payee, under a structured settlement annuity if the payee, or deceased

1 payee's beneficiary, is not a resident of this state, if neither the payee, or deceased
2 payee's beneficiary, nor the policyholder of the structured settlement annuity is
3 eligible for coverage by an organization that is comparable to the fund in the state
4 of which the payee, or deceased payee's beneficiary, or the policyholder is a resident,
5 and if either of the following applies:

6 a. The policyholder is a resident of this state.

7 b. The policyholder is not a resident of this state, but the insurer that issued
8 the structured settlement annuity is domiciled in this state, and the state in which
9 the policyholder resides has an organization that is comparable to the fund.

10 SECTION 62. 646.31 (3) of the statutes is repealed.

11 SECTION 63. 646.31 (5) of the statutes is repealed.

12 SECTION 64. 646.31 (6) (a) of the statutes is amended to read:

13 646.31 (6) (a) The portion of ~~a~~ an otherwise eligible loss claim for which
14 indemnification is provided by other benefits or advantages, which may not be
15 included in the classes of claims specified in s. 645.68 (intro.), may not be claimed
16 from the fund under this chapter or from the insured or policyholder. The claimant
17 must exhaust such collateral sources before pursuing payment from the fund. This
18 paragraph does not apply to the claim of an insured or payee under a structured
19 settlement annuity.

20 SECTION 65. 646.31 (6) (b) of the statutes is amended to read:

21 646.31 (6) (b) The board fund may waive the application of par. (a) to claims
22 under contracts subject to s. 646.35 (2) ~~or~~ (3), to the extent that the board fund
23 determines that application of par. (a) would be impracticable.

24 SECTION 66. 646.31 (7) of the statutes is amended to read:

1 646.31 (7) SETOFFS AND COUNTERCLAIMS. Section 645.56 applies to the
2 settlement of loss claims. The ~~board~~ fund shall give the liquidator a reasonable
3 opportunity to inform the ~~board~~ fund of possible setoffs and counterclaims before
4 paying loss claims.

5 **SECTION 67.** 646.31 (8) of the statutes is amended to read:

6 646.31 (8) NOTICE TO CLAIMANTS. The ~~board~~ fund shall provide notice under s.
7 645.47 (2) to those potential loss claimants to whom the fund is liable under the
8 section, if the liquidator has not done so.

9 **SECTION 68.** 646.31 (9) (a) of the statutes is amended to read:

10 646.31 (9) (a) By any security fund with an obligation to pay all loss claims of
11 the insurer;.

12 **SECTION 69.** 646.31 (9) (b) of the statutes is amended to read:

13 646.31 (9) (b) If it is a first party claim for damage to property with a permanent
14 location, by the fund of the location of the property;.

15 **SECTION 70.** 646.31 (9) (c) of the statutes is amended to read:

16 646.31 (9) (c) If it is a workers' compensation claim, by the fund of the residence
17 of the claimant;.

18 **SECTION 71.** 646.31 (9) (cm) of the statutes is created to read:

19 646.31 (9) (cm) If it is a liability claim, by the fund of the residence of the
20 policyholder.

21 **SECTION 72.** 646.31 (9) (d) of the statutes is amended to read:

22 646.31 (9) (d) In any other case, by the fund of the residence of the insured; and.

23 **SECTION 73.** 646.31 (10) of the statutes is renumbered 646.31 (10) (intro.) and
24 amended to read:

1 646.31 (10) TEMPORARY MORATORIUMS. (intro.) Before being obligated to make
2 payments under this chapter to holders of life insurance or annuity contracts the
3 fund may impose, with court approval, temporary any of the following:

4 (a) Temporary moratoriums of not more than 90 days on payments of cash
5 values and policy loans in addition to any deferrals of cash or policy loan value by
6 contractual provision. A temporary moratorium may be renewed for successive
7 periods of not more than 90 days with court approval or liens on payments of cash
8 values and policy loans, or on any other right to withdraw funds held in conjunction
9 with those policies or contracts, in addition to any contractual provisions for deferral
10 of cash or policy loan value. If the court imposes a temporary moratorium or a
11 moratorium charge on the payment of cash values or policy loans out of the assets
12 of the insolvent insurer, or on any other right to withdraw, out of those assets, funds
13 held in conjunction with those policies or contracts, the fund may defer the payment
14 of cash values and policy loans and other rights to withdraw funds for the period of
15 the moratorium or moratorium charge imposed by the court, except for any claims
16 covered by the fund to be paid in accordance with a hardship procedure established
17 by the liquidator and approved by the court.

18 **SECTION 74.** 646.31 (10) (b) of the statutes is created to read:

19 646.31 (10) (b) Permanent policy or contract liens in connection with a
20 guarantee, assumption, or reinsurance agreement, if the board finds that the
21 amounts that may be assessed under this chapter are insufficient to ensure full and
22 prompt performance of the fund's duties under this chapter, or that economic or
23 financial conditions, as they affect insurers, are such that imposing such permanent
24 policy or contract liens is in the public interest.

25 **SECTION 75.** 646.31 (11) of the statutes is amended to read:

1 646.31 (11) SUBROGATION CLAIMS. The fund is not required to pay any amount
2 due from the insurer to any reinsurer, insurer, insurance pool or underwriting
3 association as subrogation, contribution, or indemnification recoveries or otherwise,
4 except as provided in sub. (2) (a). A reinsurer, insurer, insurance pool or
5 underwriting association that has paid a claim and thereby has become subrogated
6 or otherwise entitled to the amount of that claim may assert that claim against the
7 liquidator of the insurer in liquidation but not against the insured of the insurer in
8 liquidation.

9 **SECTION 76.** 646.31 (13) of the statutes is renumbered 646.31 (13) (intro.) and
10 amended to read:

11 646.31 (13) RESIDENCY. (intro.) For purposes of determining residency in this
12 section, ~~the~~:

13 (a) The residency of a claimant, insured, or policyholder that is not a natural
14 person is the state in which the claimant's, insured's, or policyholder's principal place
15 of business is located.

16 **SECTION 77.** 646.31 (13) (b) of the statutes is created to read:

17 646.31 (13) (b) In the case of a life or disability insurance policy or an annuity
18 contract, residency means residency at the time of the liquidation order. In the case
19 of any other kind of insurance covered by this chapter, residency means residency at
20 the time of the insured event.

21 **SECTION 78.** 646.31 (13) (c) of the statutes is created to read:

22 646.31 (13) (c) A person's residency may be in only one state.

23 **SECTION 79.** 646.31 (13) (d) of the statutes is created to read:

24 646.31 (13) (d) If a person who is a citizen of the United States is a resident of
25 a foreign country, or of a possession, territory, or protectorate of the United States,

1 that does not have an organization similar to the fund, the person's residency is the
2 domicile of the insurer that issued the policy or contract.

3 **SECTION 80.** 646.32 (1) of the statutes is amended to read:

4 646.32 (1) APPEAL. A claimant whose claim is reduced or declared ineligible
5 shall promptly be given notice of the determination and of the right to object under
6 this section. The claimant may appeal to the board within 30 days after the mailing
7 of the notice. The claimant may not pursue the claim in court except as provided in
8 sub. (2).

9 **SECTION 81.** 646.325 (1) of the statutes is amended to read:

10 646.325 (1) DEFINITION. In this section, "net worth" means the amount of an
11 insured's total assets less the insured's total liabilities at the end of the insured's
12 fiscal year immediately preceding the date the liquidation order was entered, as
13 shown on the insured's audited financial statement, ~~or, if~~ and includes the
14 consolidated net worth of all of the corporate affiliates, subsidiaries, operating
15 divisions, holding companies, and parent entities that are shown as insureds or
16 additional insureds on the policy issued by the insurer. If the insured is a natural
17 person, "net worth" means the insured's total assets less the insured's total liabilities
18 on December 31 immediately preceding the date the liquidation order was entered.

19 **SECTION 82.** 646.325 (2) (intro.) of the statutes is amended to read:

20 646.325 (2) RECOVERY FROM CERTAIN INSURED AND AFFILIATES. (intro.) Except
21 as provided in sub. (3), the fund may recover from a person the costs and expenses
22 incurred in defending a claim against the person by a 3rd party and the amount of
23 any claim paid on behalf of that the person to a 3rd party, if all of the following
24 conditions are satisfied:

25 **SECTION 83.** 646.325 (2) (a) (intro.) of the statutes is amended to read:

1 646.325 (2) (a) (intro.) The person on whose behalf the claim was defended or
2 paid is any of the following:

3 **SECTION 84.** 646.325 (2) (b) of the statutes is amended to read:

4 646.325 (2) (b) Payment Adjudication of the claim resulted in no liability
5 obligation on the person to pay the claim of the 3rd party or payment of the claim
6 satisfied all or part of the person's liability obligations to 3rd parties.

7 **SECTION 85.** 646.33 (1) of the statutes is renumbered 646.33 (1) (a) and
8 amended to read:

9 646.33 (1) (a) Upon payment to any loss claimant the fund is subrogated to the
10 claimant's full right of recovery against the insurer; and, to the same extent the
11 insurer would have been subrogated, against any liquidator and any 3rd person. A
12 person receiving benefits under this chapter thereby assigns to the fund the person's
13 rights under, and any causes of action against any person for losses arising under,
14 resulting from, or otherwise relating to, the covered policy or contract to the extent
15 of the benefits received, regardless of whether the benefits are payments of or on
16 account of contractual obligations, continuation of coverage, or the provision of
17 substitute or alternative coverages.

18 (2m) RECOVERY. (a) On recovery under this section, the fund may retain both
19 the amount it has paid to the claimant and the amount it has expended to obtain the
20 recovery and shall pay any balance to the claimant.

21 **SECTION 86.** 646.33 (1) (b), (c) and (d) of the statutes are created to read:

22 646.33 (1) (b) The subrogation rights of the fund under this subsection have the
23 same priority against the assets of the insolvent insurer as the claimant's rights with
24 respect to the insurer.

1 (c) In addition to the rights specified in pars. (a) and (b), the fund has all of the
2 common law rights of subrogation and any other equitable or legal remedy that
3 would have been available to the insolvent insurer or the claimant with respect to
4 the covered policy or contract including, in the case of a structured settlement
5 annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent
6 of the benefits received under this chapter, against a person originally or by
7 succession responsible for the losses that arise from the personal injury and that
8 relate to the annuity or its payment.

9 (d) If any provision of this subsection is invalid or ineffective for any reason
10 with respect to any person or claim, the amount payable by the fund with respect to
11 the related covered obligations shall be reduced by any amount realized by any other
12 person with respect to the person or claim that is attributable to the covered policy
13 or contract.

14 **SECTION 87.** 646.33 (2) of the statutes is amended to read:

15 646.33 (2) COOPERATION. The claimant shall cooperate with the board fund in
16 pursuing the fund's rights under sub. (1), including executing any necessary
17 documents. If cooperation is withheld unreasonably, the fund may recover from the
18 claimant any amount it has paid the claimant. The fund may require a claimant to
19 execute a written assignment to it of the claimant's rights and causes of action
20 relating to the covered policy or contract as a condition precedent to the receipt of any
21 right or benefits under this chapter.

22 **SECTION 88.** 646.33 (2m) (b) of the statutes is created to read:

23 646.33 (2m) (b) If a claimant to whom the fund has provided benefits under this
24 chapter recovers amounts with respect to which the fund has rights under this

1 section, the claimant shall pay to the fund the portion of the recovery that is
2 attributable to the covered policy or contract.

3 **SECTION 89.** 646.33 (3) of the statutes is amended to read:

4 646.33 (3) CLAIMS AGAINST LIQUIDATOR. The ~~board~~ fund shall report periodically
5 and whenever a reasonable request is made to any liquidator against whom
6 subrogation rights exist under sub. (1) the claims paid and rejected together with
7 estimates of unsettled claims made or anticipated against the fund.

8 **SECTION 90.** 646.35 (2) of the statutes is repealed.

9 **SECTION 91.** 646.35 (3) (title) of the statutes is amended to read:

10 646.35 (3) (title) ~~NONDOMESTIC INSURER~~ INSURER IN LIQUIDATION.

11 **SECTION 92.** 646.35 (3) (intro.) (except 646.35 (3) (title)) of the statutes is
12 renumbered 646.35 (3) (am) (intro.) and amended to read:

13 646.35 (3) (am) (intro.) If ~~a nondomestic~~ an insurer that is subject to this
14 chapter is in liquidation, the ~~board~~ fund shall, subject to the ~~approval of the~~
15 ~~commissioner and on a determination by the commissioner that the insurer's~~
16 ~~domiciliary jurisdiction or state of entry does not provide by statute for protection to~~
17 ~~residents of this state substantially similar to that provided by this section s. 646.31~~
18 (2), do either of the following:

19 **SECTION 93.** 646.35 (3) (a) of the statutes is renumbered 646.35 (3) (am) 1. and
20 amended to read:

21 646.35 (3) (am) 1. Guarantee, assume, or reinsure, or cause to be guaranteed,
22 assumed, or reinsured, the policies of residents the insolvent insurer within the
23 scope of this section;

24 **SECTION 94.** 646.35 (3) (b) of the statutes is renumbered 646.35 (3) (am) 2. and
25 amended to read:

1 646.35 (3) (am) 2. Assure performance of the contractual obligations of the
2 insurer on such policies; and.

3 **SECTION 95.** 646.35 (3) (c) of the statutes is renumbered 646.35 (3) (bm) and
4 amended to read:

5 646.35 (3) (bm) ~~Provide the necessary money~~ Whether the fund's duties under
6 par. (am) are discharged by the fund under par. (am) 1. or 2. is at the fund's discretion.
7 The fund shall provide moneys, pledges, loans, notes, guarantees, or other means
8 reasonably necessary to discharge the duties under pars. (a) and (b) par. (am) 1. or
9 2.

10 **SECTION 96.** 646.35 (4) of the statutes is renumbered 646.35 (4) (a) and
11 amended to read:

12 646.35 (4) (a) The fund has a claim against the liquidator for reasonable
13 payments made to discharge its duties under this section. If the ~~board~~ fund and the
14 liquidator disagree regarding the reasonableness of such payments, either may
15 apply to the court to determine the question. Such payments shall have the same
16 priority as the class of claims under s. 645.68 (3).

17 **SECTION 97.** 646.35 (4) (b) of the statutes is created to read:

18 646.35 (4) (b) As a creditor of the insolvent insurer, the fund shall be entitled
19 to receive disbursements of assets out of marshaled assets, consistent with s. 645.72
20 and any substantially similar laws of other states, as a credit against obligations
21 under this chapter. If, within 120 days after a final determination of an insurer's
22 insolvency by the receivership court, the liquidator has not applied to the court for
23 approval of a proposal for disbursement of assets out of marshaled assets to
24 insurance guaranty associations having obligations because of the insolvency, the

1 fund may apply to the receivership court, in accordance with the law of the insolvent
2 insurer's domicile, for approval of its own proposal for disbursement of the assets.

3 **SECTION 98.** 646.35 (5) of the statutes is amended to read:

4 646.35 (5) RATE INCREASES. The ~~board~~ fund may increase any rates or premiums
5 on policies during continuation of coverage under sub. (2) ~~(b)~~ or (3) ~~(b)~~ (am) 2. to the
6 extent the policies permit the insurer to increase the rates or premiums. If the ~~board~~
7 fund determines that the rates or premiums on policies ~~which~~ that do not permit an
8 increase or the rates or premiums as increased to the extent permitted by the policies
9 are inadequate under s. 625.11 (3), the ~~board~~ fund may offer the policyholders the
10 option of terminating the coverage or continuing the coverage at adequate rates or
11 premiums as determined by the ~~board~~ fund.

12 **SECTION 99.** 646.35 (6) (a) of the statutes is amended to read:

13 646.35 (6) (a) In the case of an annuity contract, the ~~board~~ fund may limit its
14 performance to payment of the then current value of the loss claim under s. 645.68
15 (3) as of the date of the order of liquidation, with interest to the date of payment, in
16 lieu of the requirements of sub. (2) ~~or~~ (3).

17 **SECTION 100.** 646.35 (6) (b) of the statutes is amended to read:

18 646.35 (6) (b) In the case of a disability insurance policy ~~which~~ that is neither
19 guaranteed renewable nor noncancelable, the ~~board~~ fund is not obligated to continue
20 the policy in force beyond the time required under s. 645.43 or the date established
21 in the liquidation order of another state, but may continue the coverage under any
22 disability insurance policy for up to 180 days after the date of the liquidation order.
23 ~~The commissioner may adopt rules defining "guaranteed renewable" and~~
24 ~~"noncancelable" for the purposes of this paragraph.~~

25 **SECTION 101.** 646.35 (6) (bm) of the statutes is amended to read:

1 646.35 (6) (bm) For coverages continued pursuant to par. (b), the board fund
2 may substitute a comprehensive health insurance policy approved by the
3 commissioner for a health maintenance organization policy that is subject to sub. (2)
4 ~~or~~ (3), and increase rates or premiums for the substituted coverage as provided in
5 sub. (5).

6 **SECTION 102.** 646.35 (6) (c) (intro.) of the statutes is amended to read:

7 646.35 (6) (c) (intro.) In the case of a life insurance or annuity contract, the
8 board fund is not obligated to perform the responsibilities set forth in sub. (2) ~~or~~ (3)
9 with respect to either of the following:

10 **SECTION 103.** 646.35 (6) (c) 1. (intro.) of the statutes is amended to read:

11 646.35 (6) (c) 1. (intro.) Any benefit payment liability, arising on or after the
12 date of entry of the order of liquidation, to the extent that the ~~payment is based upon~~
13 ~~a rate of interest that~~ rate of interest on which it is based or the interest rate,
14 crediting rate, or similar factor determined by use of an index or other external
15 reference stated in the policy or contract and employed in calculating returns or
16 changes in value exceeds the larger smaller of the following:

17 **SECTION 104.** 646.35 (6) (c) 1. b. of the statutes is amended to read:

18 646.35 (6) (c) 1. b. The rate of interest, which may not be less than zero,
19 determined by subtracting 3 percentage points from the monthly corporate bond
20 yield average, as most recently published by Moody's investors service or its
21 successor ~~and as adjusted on a monthly basis.~~

22 **SECTION 105.** 646.35 (6) (c) 2. (intro.) of the statutes is amended to read:

23 646.35 (6) (c) 2. (intro.) Any benefit payment liability, arising before the date
24 of entry of the order of liquidation, to the extent that the ~~payment is based upon a~~
25 ~~rate of interest that~~ exceeds the larger smaller of the following:

1 **SECTION 106.** 646.35 (6) (c) 2. b. of the statutes is amended to read:

2 646.35 (6) (c) 2. b. The rate of interest, which may not be less than zero,
3 determined by subtracting 2 percentage points from the monthly corporate bond
4 yield average, as published by Moody's investors service or its successor, when
5 averaged ~~for over~~ the 4-year period ending on the date ~~the fund becomes obligated~~
6 ~~with respect to the contract~~ of entry of the order of liquidation or averaged ~~for over~~
7 such lesser period if the contract was issued less than 4 years before that date.

8 **SECTION 107.** 646.35 (7) of the statutes is created to read:

9 646.35 (7) EXCLUSION FOR COVERAGE UNDER ANOTHER FUND. (a) Notwithstanding
10 s. 646.31 (9), the fund shall not provide coverage under this section to any person
11 who, directly or indirectly, has coverage under any other state's security fund
12 statutes.

13 (b) In determining whether par. (a) applies in a situation in which a person
14 could potentially be covered by security funds of more than one state, par. (a) shall
15 be construed in conjunction with other states' laws in such a manner as to result in
16 coverage for the person by only one security fund.

17 **SECTION 108.** 646.35 (8) of the statutes is created to read:

18 646.35 (8) REINSURANCE. (a) In this subsection, "coverage date" means the date
19 on which the fund becomes responsible for the obligations of an insolvent insurer.

20 (b) At any time within one year after the coverage date, the fund may elect to
21 succeed to the insolvent insurer's rights and obligations that accrue on or after the
22 coverage date and that relate to contracts covered, in whole or in part, by the fund
23 under one or more indemnity reinsurance agreements entered into by the insolvent
24 insurer as a ceding insurer and selected by the fund. The election shall be effected
25 by a notice to the liquidator and to any affected reinsurer. The fund may not exercise

1 an election under this paragraph with respect to a reinsurance agreement that the
2 liquidator has expressly disaffirmed.

3 (c) With respect to each indemnity reinsurance agreement for which the fund
4 makes an election under par. (b):

5 1. The fund shall be responsible for all unpaid premiums under the agreement,
6 for periods both before and after the coverage date, and for the performance of all
7 other obligations to be performed under the agreement after the coverage date, that
8 relate in each case to contracts covered, in whole or in part, by the fund. The fund
9 may charge contracts covered in part by the fund, through reasonable allocation
10 methods, for the costs of reinsurance in excess of the obligations of the fund.

11 2. The fund is entitled to any amounts payable by the reinsurer under the
12 agreement with respect to losses or events that occur in periods after the coverage
13 date and that relate to contracts or contractual obligations covered, in whole or in
14 part, by the fund. Upon receipt of any such amounts, the fund must pay to the
15 beneficiary under the policy or contract on account of which the amounts were paid,
16 the amount by which the benefits paid by the fund on account of the policy or contract
17 less the retention of the insolvent insurer applicable to the loss or event is exceeded
18 by the amount received by the fund.

19 3. Within 30 days after the election, the fund and the indemnity reinsurer must
20 calculate the net balance due to or from the fund under the agreement as of the date
21 of the election, giving full credit to all items paid by the insolvent insurer, the
22 insurer's liquidator, and the indemnity reinsurer between the coverage date and the
23 date of the election. The fund or the indemnity reinsurer shall pay the net balance
24 due to the other within 5 days after the calculation is completed. The liquidator shall

1 remit to the fund as promptly as practicable any amounts received by the liquidator
2 that are due the fund under subd. 2.

3 4. If, within 60 days of the election, the fund pays all premiums due for periods
4 both before and after the coverage date that relate to contracts covered, in whole or
5 in part, by the fund, the reinsurer may not terminate the agreement insofar as it
6 relates to contracts covered, in whole or in part, by the fund and may not set off
7 against amounts due the fund any unpaid premium due for periods before the
8 coverage date.

9 (d) If the fund transfers its obligations to another insurer and the fund and
10 other insurer agree, unless the the fund has previously expressly determined in
11 writing that it will not exercise an election under par. (b), the other insurer succeeds
12 to the rights and obligations of the fund under pars. (b) and (c), regardless of whether
13 the fund has exercised an election under par. (b). If the other insurer succeeds to the
14 fund's rights and obligations under pars. (b) and (c):

15 1. The indemnity reinsurance agreements automatically terminate for new
16 reinsurance, unless the indemnity reinsurer and the other insurer agree to the
17 contrary.

18 2. On and after the date on which an indemnity reinsurance agreement is
19 transferred to the other insurer, the fund is no longer obligated to pay beneficiaries
20 the amounts specified in par. (c) 2. with respect to that agreement.

21 (e) This subsection supersedes s. 645.58 (1), any applicable rules of the
22 commissioner, and the provisions of any affected reinsurance agreement that
23 provide for or require payment of reinsurance proceeds to the liquidator of the
24 insolvent insurer on account of losses or events that occur after the coverage date.
25 The liquidator remains entitled to any amounts payable by the reinsurer under the

1 reinsurance agreement with respect to losses or events that occur before the coverage
2 date, subject to any applicable setoff provisions.

3 (f) Nothing in this subsection, except as expressly provided in this subsection:

4 1. Alters or modifies the terms or conditions of the indemnity reinsurance
5 agreements of the insolvent insurer.

6 2. Abrogates or limits any rights of any reinsurer to rescind a reinsurance
7 agreement.

8 3. Gives a policy owner or beneficiary an independent cause of action against
9 an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance
10 agreement.

11 **SECTION 109.** 646.35 (9) of the statutes is created to read:

12 646.35 (9) COVERAGE OBLIGATIONS. Notwithstanding sub. (3), in performing its
13 obligations to provide coverage under this section, the fund is not required to
14 guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed,
15 reinsured, or performed, the contractual obligations of an insolvent insurer under a
16 covered policy or contract that do not materially affect the economic values or
17 economic benefits of the covered policy or contract.

18 **SECTION 110.** 646.35 (10) of the statutes is created to read:

19 646.35 (10) BOARD DETERMINATIONS. The board shall have discretion to
20 determine the means by which the fund may economically and efficiently provide
21 benefits under this section. If the board has arranged or offered to provide benefits
22 to a person under a plan or arrangement that fulfills the fund's obligations under this
23 section, the person is not entitled to any benefits from the fund in addition to or other
24 than those provided under the plan or arrangement.

1 **SECTION 111.** 646.51 (1) of the statutes is renumbered 646.51 (1m) and
2 amended to read:

3 **646.51 (1m) DUTY TO ASSESS.** As soon as practicable after a liquidation order
4 has been issued, the board shall estimate separately for each of the accounts of s.
5 646.11 (2), the amounts necessary to make the payments provided by this chapter
6 and shall ~~order~~ authorize assessments separately for each account.

7 **SECTION 112.** 646.51 (1c) of the statutes is created to read:

8 **646.51 (1c) DEFINITIONS.** In this section:

9 (a) “Authorize” means, with respect to assessments, to approve, by the adoption
10 of a resolution by the board, that an assessment from insurers in a specified amount
11 be called immediately or in the future. An assessment is authorized when the
12 resolution is adopted by the board.

13 (b) “Call” means, with respect to assessments, to require payment, by the
14 mailing of a notice to insurers by the fund, of an authorized assessment within the
15 time set forth in the notice. An assessment is called when notice is mailed to insurers
16 by the fund.

17 **SECTION 113.** 646.51 (2) of the statutes is repealed.

18 **SECTION 114.** 646.51 (3) (a) (title) of the statutes is renumbered 646.51 (3) (am)
19 (title).

20 **SECTION 115.** 646.51 (3) (a) 1. of the statutes is renumbered 646.51 (1c) (c) and
21 amended to read:

22 **646.51 (1c) (c)** ~~In this section, “premiums”~~ “Premiums” means gross premiums
23 and other considerations received for direct insurance and annuities, including
24 considerations for a plan established under ss. 185.981 to 185.985, less return
25 premiums and other considerations, dividends, and experience credits paid or

1 credited to policyholders on ~~the direct~~ such business. The term “premiums” does not
2 include ~~any amounts received for any contracts or for the portions of any contracts~~
3 ~~for which coverage is excluded under s. 646.01 (1) (b)~~ premiums or other
4 considerations received for policies or contracts, or for portions of policies or
5 contracts, for which coverage is not provided under this chapter, except that the
6 amount of assessable premiums or other considerations shall not be reduced on
7 account of limitations with respect to a single risk, loss, or life under s. 646.31 (4) or
8 on account of interest limitations under s. 646.35 (6) (c).

9 **SECTION 116.** 646.51 (3) (a) 2. of the statutes is renumbered 646.51 (3) (am)
10 (intro.) and amended to read:

11 646.51 (3) (am) (intro.) Except as provided in ~~pars. (b) and par. (c)~~, assessments
12 shall be calculated as follows:

13 1. For assessments authorized by the board before the effective date of this
14 subdivision [revisor inserts date], as a percentage of premiums premium written
15 in this state by each insurer in the classes protected by the ~~account~~, accounts for the
16 year preceding the year of entry of the order of liquidation.

17 **SECTION 117.** 646.51 (3) (am) 2. of the statutes is created to read:

18 646.51 (3) (am) 2. For assessments authorized by the board on or after the
19 effective date of this subdivision [revisor inserts date], as a percentage of premium
20 written in this state by each insurer in the classes protected by the accounts for the
21 year preceding the year in which the assessment is authorized by the board.

22 **SECTION 118.** 646.51 (3) (b) of the statutes is repealed.

23 **SECTION 119.** 646.51 (3) (c) of the statutes is amended to read:

24 646.51 (3) (c) *Administrative assessments.* The board may ~~make~~ authorize
25 assessments on a prorated or nonprorated basis to meet administrative costs and

1 other expenses whether or not related to the liquidation or rehabilitation of a
2 particular insurer. Nonprorated assessments may not exceed \$200 per insurer in
3 any year.

4 **SECTION 120.** 646.51 (4) of the statutes is renumbered 646.51 (4) (c) and
5 amended to read:

6 646.51 (4) (c) ~~The maximum assessment under this section in any calendar~~
7 ~~year is 2% of the assessable premiums under sub. (3). If the maximum assessment~~
8 ~~does not enable the fund to meet its obligations, an additional assessment shall be~~
9 ~~made in each succeeding year until the amounts available enable the fund to meet~~
10 ~~its obligations. No Assessments to meet the obligations of the fund with respect to~~
11 ~~an insurer in liquidation may not be authorized or called unless the board makes a~~
12 ~~finding that it is necessary for implementing the purposes of this chapter.~~
13 Recognizing that exact determinations may not always be possible, the board shall
14 endeavor to classify and calculate assessments with a reasonable degree of accuracy.
15 No authorized assessment may be levied called if the assets held in the appropriate
16 account of the fund are sufficient to cover all estimated payments for liquidations in
17 progress.

18 **SECTION 121.** 646.51 (4) (a), (b) and (d) of the statutes are created to read:

19 646.51 (4) (a) Subject to pars. (b) and (d), the total of all assessments for an
20 amount authorized by the board under this section with respect to an insurer may
21 not, in one calendar year, exceed 2% of the insurer's average annual premiums
22 received in this state, during the 3 calendar years preceding the year of entry of the
23 order of liquidation, on the types of policies and contracts that are covered by the
24 account.

(b) If the maximum assessment under par. (a), together with the other assets of the fund in an account, does not provide in one year in the account an amount that is sufficient for the fund to meet its obligations, the board shall assess additional amounts in each succeeding year until the amounts available enable the fund to meet its obligations.

(d) If 2 or more assessments are authorized in one calendar year with respect to insurers placed in liquidation in different calendar years, the average annual premiums for purposes of the limitation in par. (a) shall be equal and limited to the higher of the 3-year annual premium average for the applicable account.

SECTION 122. 646.51 (5) of the statutes is amended to read:

646.51 (5) COLLECTION. After the rate of assessment has been fixed, the board fund shall send to each insurer a statement of the amount it is to pay. The ~~board~~ fund shall designate whether the assessments shall be made payable in one sum or in installments. Assessments shall be collected by the same procedures as premium taxes or license fees under ch. 76.

SECTION 123. 646.51 (6) of the statutes is amended to read:

646.51 (6) APPEAL AND REVIEW. Within 30 days after the ~~board~~ fund sends the statement under sub. (5), an insurer, after paying the assessment under protest, may appeal the assessment to the board or a committee thereof. The decision of the board on the appeal is subject to judicial review.

SECTION 124. 646.51 (7) (a) of the statutes is amended to read:

646.51 (7) (a) An insurer's premium rates are not excessive because they contain an amount reasonably calculated to recoup assessments ~~made~~ called under this chapter.

SECTION 125. 646.51 (8) of the statutes is amended to read:

1 646.51 (8) ABATEMENT AND DEFERRAL. The board may abate or defer the
2 assessment of an insurer in whole or part if payment of the assessment would
3 endanger the ability of the insurer to fulfill its contractual obligations. The amount
4 by which an assessment is abated or deferred may be assessed under this section
5 against other insurers. When the conditions that prompted the board to defer
6 assessment of an insurer no longer exist, the insurer shall pay all assessments that
7 were deferred in accordance with a repayment plan approved by the board.

8 **SECTION 126.** 646.51 (9) (b) 1. of the statutes is amended to read:

9 646.51 (9) (b) 1. Assessments made authorized or called before the insurer's
10 license or certificate of authority terminated or expired.

11 **SECTION 127.** 646.51 (9) (b) 2. of the statutes is amended to read:

12 646.51 (9) (b) 2. Assessments made authorized or called after the insurer's
13 license or certificate of authority terminated or expired that relate to a liquidation
14 order entered before the insurer's license or certificate of authority terminated or
15 expired.

16 **SECTION 128.** 646.60 (1) (a) of the statutes is amended to read:

17 646.60 (1) (a) *Settlements by the fund.* The liquidator is bound by
18 determinations and settlements of covered loss claims, and by payments of claims,
19 made by the board fund under this chapter.

20 **SECTION 129.** 646.61 (2) of the statutes is amended to read:

21 646.61 (2) To meet the needs of the fund the board fund may temporarily
22 transfer assets from one account to another.

23 **SECTION 130.** 646.73 of the statutes is repealed.

24 **SECTION 131. Initial applicability.**

(1) The treatment of sections 609.98 (1) and (4) (a) and (b), 645.58 (1) (intro.), 646.01 (1) (a) 2. k. and L. and (b) 1., 9. (intro.), a., b., c., and d., 11., 11m., 15., 16., 17., and 18., 646.03 (1m), (2n), (2p), (4), and (5), 646.12 (2) (d) and (f) 2. and 3. and (4), 646.13 (title), (1) (intro.) and (b), (2) (intro.), (b), (c), (d), and (g), (3) (intro.), (a), (b), and (c) (intro.) and 2., and (4), 646.15 (title) and (1) (a) (intro.), 1., 2., and 4., 646.16, 646.21 (2), 646.31 (1) (d) 10. and 11., (2) (a) 1. and 2., (b) 1., 2. (intro.), a., and b., and 3., (f) (title) and 2., and (g), (3), (5), (6) (a) and (b), (7), (8), (9) (a), (b), (c), (cm), and (d), and (11), 646.32 (1), 646.325 (1) and (2) (intro.), (a) (intro.), and (b), 646.33 (2), (2m) (b), and (3), 646.35 (2), (3) (title), (intro.) (except 646.35 (3) (title)), (a), (b), and (c), (5), (6) (a), (b), (bm), and (c) (intro.), 1. (intro.) and b., and 2. (intro.) and b., (7), (8), (9), and (10), 646.51 (1), (1c), (2), (3) (a) (title), 1., and 2., (am) 2., (b), and (c), (5), (6), (7) (a), (8), and (9) (b) 1. and 2., 646.60 (1) (a), 646.61 (2), and 646.73 of the statutes, the renumbering and amendment of sections 646.11 (1), 646.31 (10) and (13), 646.33 (1), 646.35 (4), and 646.51 (4) of the statutes, and the creation of sections 646.11 (1) (d) and (e), 646.31 (10) (b) and (13) (b), (c), and (d), 646.33 (1) (b), (c), and (d), 646.35 (4) (b), and 646.51 (4) (a), (b), and (d) of the statutes first apply to liquidation proceedings in which a liquidation order is issued on the effective date of this subsection.

(END)